meaningless. To anyone like myself, who has served as an Attorney General and known no respite from the labour of preparing legislation to meet insistent and ever growing demands, it is easy to understand what has happened. I feel reasonably confident that the omission to repeal paragraph (c) of section 69 is due to an oversight, which will be repaired in course of time; but quite apart from that view of the matter I find no difficulty whatever in holding that the abolition of all extended criminal jurisdiction in the case of First Class Magistrates has rendered that paragraph (c) inoperative.

I reduce the sentence in this case to one of 12 months' rigorous imprisonment.

Sentence varied.

[SPECIAL APPELLATE JURISDICTION.]

PEDLOW, J.

December 2, 1936.

[APPEAL FROM REGISTRAR OF TITLES, SELANGOR.]

CHUA TECK NEO.....Appellant.

v.

THE REGISTRAR OF TITLES, SELANGOR ..... Respondent.

[SELANGOR CIVIL APPEAL No. 33 of 1936.]

The Land Code (Cap. 138) Schedule XXIV (a)—Form of charge—Provision for chargee to include in the charge moneys expended by him on insurance, repairs and payment of taxes.

On the 24th September, 1936, the Registrar of Titles, Selangor, rejected a charge presented by the appellant, which was in the following form:—

"I, N. K. Valliappa Chettiar son of Nagappa Chettiar of No. 41 Sultan Street, Klang being registered as the proprietor subject to the leases charges or other registered interests stated in the document of title thereto of the whole of the lands held under Selangor Land Grant No. 1603 and Certificates of Titles Nos: 6983, 6984, 9004, 10649, 10650, 10651 and 10652 for Lot No. 4 of Section 36; Lots Nos: 20 and 21 of Section 38; Lots Nos: 2 and 3 of Section 36 and Lots Nos: 17, 18 and 19 of Section 38 in the Town of Kuala Lumpur in the district of Kuala Lumpur in total area 0 acres 0 roods 56.03 poles in consideration of the sum of $30,000/- (Dollars Thirty Thousand) only lent to me by Chua Teck Neo (f) Circular Road, Kuala Lumpur (hereinafter called "the said chargee") the receipt of which sum I hereby acknowledge do hereby agree.

Firstly that I will pay to her the said chargee at Kuala Lumpur the above sum of $30,000/- on the 10th day of September 1937.

Secondly that until final repayment of the principal sum I will pay interest on the said sum at the rate of $9/- by the hundred dollars in the year by equal payments of $225/- on the 10th day of every month the first of such payments to be made on the 10th day of October 1936.

Thirdly that if any default be made in payment of the interest aforesaid on the due date, then the principal sum together with accrued interest shall immediately become due and payable on demand by the said chargee.

Fourthly that the said chargee shall have the custody or possession of the issue copies of the said Selangor Land Grant No. 1603 and Certificates of Titles Nos: 6983, 6984, 9004, 10649, 10650, 10651 and 10652 in respect of the said lands.

Fifthly that I will not transfer, sell, charge or otherwise deal with the said lands without the written consent of the said chargee first had and obtained.

Sixthly that I will insure and keep insured the buildings bearing Nos: 105, 107, 109, 111, 124, 126, 128, 130 and 132 Batu Road, Kuala Lumpur, erected on the said lands against loss or damage by fire in the sum of $42,000/- at least in the name of the said chargee with such Insurance Company or Companies as may be appointed by the said chargee and will lodge the policy or policies with the said chargee and if default be made herein it shall be lawful for but not obligatory upon the said chargee to insure the same and all moneys expended by the said chargee together with interest thereon at the rate of nine per cent. per annum from the date of such payments shall on demand be repaid to the said chargee and until such repayment shall be a charge upon the said lands in addition to the other moneys hereby secured.

Seventhly that I will keep the said buildings now standing or that may hereafter be erected on the said lands in tenantable repair and condition. In default whereof it shall be lawful for but not obligatory upon the said chargee to carry out such repairs and all moneys expended by the said chargee for such purpose together with interest thereon at the rate of nine per cent. per annum from the date of such payments shall on demand be repaid to the said chargee and until such repayment shall be a charge upon the said lands in addition to other moneys hereby secured.

Eighthly that I will during the term of this security pay the quit rent, assessment rates and taxes payable from time to time in respect of the said lands as and when the same shall become due and payable. In default whereof it shall be lawful for but not obligatory upon the said chargee to pay the same or any part thereof and all moneys expended by the said chargee together with interest thereon at the rate of nine per cent. per annum from the date of such payments shall on demand be repaid to the said chargee and until such repayment shall be a charge upon the said lands in addition to the other moneys hereby secured.

Ninthly that I will continue to pay interest at the rate aforesaid until the said sum of $30,000/- and other moneys secured by this Charge are fully repaid:

and for the better securing to the said chargee the repayment in manner aforesaid of the principal sum and interest I hereby charge the lands above described with such principal sum and interest and subject to the aforesaid the said chargee shall be entitled to all the powers and remedies given to a chargee by the Land Code (Cap. 138)."

The grounds of the Registrar of Titles, for rejecting this charge were as follows:—

"This is a Memorandum of Charge by N. K. Valliappa Chettiar son of Nagappa Chettiar in favour of Chua Teck Neo (f) for securing the repayment of the principal sum of $30,000/- and interest. The concluding part of the charge reads

"and for the better securing to the said Chargee the repayment in manner aforesaid of the principal sum and interest I hereby charge the lands above described with such principal sum and interest and subject to the aforesaid the said chargee

shall be entitled to all the powers and remedies given to a chargee by The Land Code, (Cap. 138)."

2. The charge is stated to be in the form in Schedule XXIV (a) of the Land Code and sets forth certain special stipulations. The sixth, seventh and eighth stipulations provide for the creation of charges on the land on the occurrence of the events and contain the words " until such repayment shall be a charge upon the said land ———in addition to the other moneys hereby secured." The creation of these additional charges in the manner contemplated is inconsistent with the concluding part of the charge as quoted in paragraph 1 above. This concluding part of the charge is part of the form in Schedule XXIV (a) which is itself part of the Land Code, Cap. 138 and under section 230 the alterations and additions to the form in Schedule XXIV which may be permitted by the proper registering authority may not be inconsistent with anything in any written law contained.

3. Further, the creation of these subsequent charges upon the occurrence of certain events would be inconsistent with the priority given to a second registered charge under Section 79, Cap. 138.

4. The charge is therefore rejected under section 87 (i) as unfit for registration."

The appellant appealed against the Registrar's decision under section 237 of the Land Code (Cap. 138).

Held, that the law does not permit additional charges as in paragraphs six, seven and eight of this memorandum of charge to be added under the blank clause " thirdly " in Schedule XXIV (a) of the Land Code (Cap. 138).

R. Ramani for appellant: The appellant's case is

(1) The Registrar in rejecting the charge had no jurisdiction to go into the merits of the stipulations.

(2) Even if he had such jurisdiction, the stipulations in paragraphs 6, 7 and 8 are properly inserted.

(3) The Land Code sanctions their inclusion.

As to (1), the Registrar is purely a ministerial officer. " In itself fit " in section 87 of the Land Code means on the face of it registrable as a formal document. Section 230 has no bearing because the framework of Schedule XXIV (a) has not been altered.

As to (2), quit rent is a statutory first charge—see section 28 (i); so is assessment—see section 45 Sanitary Boards Enactment (Cap. 137). Anything done by the chargee for the benefit of the chargor and for the preservation of the security should and can be included in the charge—compare English law of Mortgages, *Halsbury* Vol. 21 pp. 122, 123 and 239. See *National Provincial Bank of England* v. *Games*, 31 Ch. D. 582 and Encyclopaedia of Forms and Precedents, 2nd Edition, Vol. 10 pp. 38, 39 and also Form 75 at p. 122 *et seq.*, of which this charge is a copy.

As to (3)—see section 150 of the Land Code —" costs legally claimable thereunder "—here " costs " used in the general sense. Generally—see *Hogg* on Registration of Titles pp. 211 *et seq.*, and *Kerr* on the Australian Lands Titles System pp. 52 *et seq.* (functions of Registrar) and pp. 122 *et seq.* (statutory form).

H. C. Willan, Deputy Legal Adviser, for the Registrar of Titles, Selangor: Schedule XXIV (a) is part of the Land Code itself and under section 87 it is mandatory on the Registrar to reject any instrument which contravenes the provisions of any written law. Any stipulations entered under the paragraph marked " thirdly " in this Schedule, must be consistent with the memorandum of charge as set forth in the Schedule.

An examination of this charge shows that it is for a fixed sum of $30,000 and interest and from the last paragraph it is clear that the land is secured for the repayment of $30,000 plus interest and nothing else. By inserting paragraphs 6, 7 and 8 the whole form is altered from a charge for a fixed sum to a charge for a sum of money which is indefinite. Paragraphs 6, 7 and 8 are inconsistent with the last paragraph in the charge and therefore the Registrar had to reject the charge under section 87.

Stamp duty has been paid on $30,000 only. yet the appellant seeks to increase that sum without paying any additional stamp duty.

The English law of Mortgages has no application.

R. Ramani, in reply. The Land Enactment, 1911, provided a clause for insurance in the form of charge.

PEDLOW, J.—This is an appeal against the decision of the Registrar of Titles in rejecting and refusing to register under section 87 of the Land Code a memorandum of charge by N. K. Valliappa Chettiar in favour of Chua Teck Neo (f) securing the repayment of the principal sum of $30,000 and interest. The ground of rejection by the Registrar is that the stipulations sixthly, seventhly and eighthly provided additional charges on the land in addition to the main charge. The actual language used is that until such repayment the payments made shall be a charge upon the said land in addition to other moneys hereby secured. The same phraseology is used in each of the three clauses in the charge, sixthly, seventhly and eighthly. It seems to me that the word ' charge ' in these clauses can only be used in the technical sense of charge under the Land Code and that the Registrar was correct in rejecting the document for registration because it is not possible to create a charge in the technical sense on the land merely by declaring that these moneys shall be a charge. On the document presented for registration, I hold that the Registrar was correct in refusing it for registration.

The point has been raised before me as to whether or not it is permissible under the law to add clauses such as these to the charge provided

the wording were suitably altered. I take the view that what I now say on this matter is only *obiter* but as the point has been raised and argued before me I propose to state my opinion. The learned Deputy Legal Adviser has argued that whatever phraseology is used the clause left blank, Thirdly in the form given in the Land Code, Schedule XXIV (a), cannot be used for increasing the amount of money secured by the charge on the land beyond the sum expressed to be lent on the charge plus the interest due thereon. Mr. Ramani has argued that it was open to the chargor and chargee to make under "thirdly" additional contractual obligations and that such additional contracts were in order even though they purported to pledge the land as security for the repayment of sums in addition to the sum expressed to be lent plus the interest on that sum. The point is not without difficulty and I realise that in the past documents have been registered with charges which contain clauses purporting to increase in this way the sum secured on the land; but this document, the draft form of the Schedule, has to be construed as it stands. The Registrar is allowed under section 230 of the Land Code to permit such alterations and additions to any of the forms in Schedule XXIV as are necessary and are not inconsistent with anything in any written law contained. The problem before me at the moment is not whether I consider it desirable that there should be power to create additional burdens on the land by means of the blank clause in the draft form of the Schedule but whether the legislature has provided for the creation of such additional charges. One of the disputed clauses in the memorandum of charge concerns the insurance of the buildings on the land and Schedule XXIV (d) contains a clause, sub-clause (iii), dealing with the question of insurance on the building on the land, but it contains no clause allowing the chargee in default himself to insure and for the money paid for insurance to be a charge on the land. This is all the more remarkable because in the memorandum of charge, Schedule L, of the Land Enactment of 1911, there is actual provision that it shall be lawful for the chargee to insure the buildings and recover the cost of so doing in the same manner as arrears of interest. It seems to me, therefore, that those charging words have been omitted on purpose and in view of this and of the absence of any express provision in the law allowing insurance money to be recovered as a charge on the land I can only come to the conclusion that it was not the intention of the legislature to allow additional burdens on the land. The same argument seems to apply to the other two clauses dealing with repairs to buildings, payment of quit rent, assessment, rates and taxes. The question of repairs to buildings is dealt with in section 133 of the Land Code where it is laid down that there is an implied agreement by the chargor to keep the buildings in repair, but there is nothing in the Land Code to say that the chargee may repair and recover as a charge on the land. I, therefore, come to the conclusion that the law does not permit additional charges, as in sixthly, seventhly and eighthly of the document or memorandum of charge, rejected by the Registrar, to be added under the blank clause "thirdly" in the draft form of the memorandum of charge in Schedule XXIV (a).

The object of the charging clause in the Land Code I take to be to facilitate the lending of money or the raising of money by a charge on land. Where the land charged is of itself of no very great value but its value arises from the fact that valuable buildings stand on it, under the view which I have taken of the law as it stands the object of the Land Code to facilitate the raising of money seems to be very largely defeated. I am in entire agreement with the submission of the learned counsel for the appellant that obligations such as those contained in clauses sixthly, seventhly and eighthly which are undertaken for the benefit of the chargor and for the protection of the security given to the chargee should be made possible by legislation. In particular it seems to me very desirable that the chargee should have power to keep buildings insured and to recover the insurance premia paid as a charge on the land otherwise the value of the security may vanish overnight, and it can scarcely be assumed that this last is the wish of the legislature. However I am only concerned with interpreting the law as it stands. It is understood that a Committee is at present engaged in revising the Land Code and I would suggest that representations be made to that Committee or to Government that power should be given to the chargee to incur, if necessary, expenses of the type which we have been considering, namely, insurance of property, repairs to house property and payment of rent and assessment and should be able to recover such outgoings as a charge on the land in addition to the principal sum and interest already secured. So far as the present appeal is concerned the appeal must be dismissed. By consent no order is made as to costs.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

December 17, 1936.

LETCHUMANAN .....Defendant-Appellant.

v.

SITHAMBARAM CHETTY.....Plaintiff-Respondent.

[PERAK MAGISTRATE'S CIVIL APPEAL No. 19 of 1936.]

The (Perak) Public Servants (Liabilities) Regulation, 1893—*Fireman in employ of the Federated Malay States Railways on daily wages.*